



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 16, 2023

IN THE MATTER OF:

Appeal Board No. 626601

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 626598, 626599 and 626600, the claimant appeals from the decisions of the Administrative Law Judge filed November 4, 2022, insofar as they sustained the initial determinations holding the claimant ineligible to receive benefits, effective December 14, 2020 through December 15, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$71 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right

to receive future benefits by eight effective days and charging a civil penalty of \$100 on the basis that the claimant made a willful misrepresentation to obtain benefits.

In Appeal Board Nos. 626601, 626602 and 626603, the claimant appeals from the decisions of the Administrative Law Judge filed November 4, 2022, insofar as they sustained the initial determinations disqualifying the claimant from receiving benefits, effective December 16, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of

\$2,307.50 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), \$8,100 in Federal Pandemic Unemployment Compensation

(FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$1,704 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security

(CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$1,816.72 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, testimony was taken. There were appearances on behalf of the claimant, the employer, and the Commissioner of Labor.

Our review of the record reveals that the cases should be remanded to hold a hearing. Prior to the November 2, 2022 hearing, the claimant's attorney requested an adjournment because she was engaged in Queens County Supreme Court on a criminal matter, scheduled for the same date and time as the hearing. The Board has determined to provide the claimant with a further opportunity to provide testimony and evidence and participate in this matter with her representative present.

The parties are placed on notice that the Judge shall consider whether the claimant's separation was due to the end of her assignment prior to receiving a new assignment or was due to a substantial change in the terms and conditions of her employment.

The Commissioner of Labor is to appear again by Thomas E. Tillson, Senior Unemployment Insurance Hearing Representative and the employer is to produce Administrator Darlene Gonzalez. The claimant's representative is to be offered the opportunity to question the claimant further. She is also to be given the opportunity to cross-examine the testimony of Mr. Tilson from the November 2, 2022 hearing and is to be offered the opportunity to cross-examine Ms. Gonzales further on her testimony from the September 21, 2022 hearing. The claimant's attorney is to also be given the opportunity to offer objection to the entry of Hearing Exhibit 14 into the record.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge, insofar as they sustained the initial determinations, be, and the same hereby are, rescinded; and it is further

ORDERED, that the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on only the issues of lack of total

unemployment, voluntary separation without good cause, recoverable overpayment and willful misrepresentations, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on the issues of lack of total unemployment, voluntary separation without good cause, recoverable overpayments and willful misrepresentations, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER